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Subject: Yes For Seattle ECA comments

Hon. Greg Nickels
Mayor, City of Seattle
P.O. Box 94749
Seattle, WA 98124-4749

Diane Sugimura
Director
Department of Planning and Development
City of Seattle
P.O. Box 34019
Seattle, WA 98124-4019

Subject: Environmentally Critical Areas Ordinance Updates

Dear Mayor Nickels and Ms. Sugimura:

On behalf of Yes for Seattle's members, activists, and supports, we would like to submit these comments on Seattle's Draft Environmentally Critical Areas Ordinance Updates.

As you are aware, Yes for Seattle was the proponent of Initiative 80, the Save Seattle Creeks initiative. During our campaign for I-80, our members and supporters had personal conversations with over 40,000 Seattle residents. Over 25,000 Seattle citizens signed I-80 asking the City Council to adopt a strong law requiring protection and restoration of Seattle's urban creek system.

While I-80 never made it to the ballot, there was no question that the public strongly supported its creek restoration policies. Our polling showed that over 80% of registered voters in Seattle supported the policies in Initiative 80. Indeed, the City has taken several steps in recent years that have recognized the importance of urban creek restoration. Perhaps most important, Mayor Nickels and the City Council have supported a natural drainage / daylighting project for Thornton Creek on Northgate's South Lot. In addition, the City is strengthening its Comprehensive Plan to favor creek protection and restoration and Seattle Public Utilities has adopted policies and implemented projects favoring natural drainage strategies. The Mayor's new "Restore Our Waters" strategy is another example of the city creating opportunities to move forward on creek protection and restoration.

At the commencement of this update process, Yes for Seattle was hopeful that the update would incorporate some of I-80's provisions and would take a strong step forward into restoring Seattle's urban creeks. Instead, we were disappointed to find that the draft update proposes to remove critical protections from Seattle creeks.

Under the existing Critical Areas Ordinance (CAO), every effort must be made to avoid developing over a creek that is currently contained in a creek or

culvert. By discouraging such development, this policy preserves the ability to restore these creeks in the future. At the same time, the CAO allows the Director to provide incentives for daylighting projects, including the ability to relocate the creek on the property or to reduce the size of buffers.

The proposed updates take a major step backwards by removing the protections for creeks in pipes and by reducing the scenarios in which daylighting incentives may be given.

The proposed updates delete the section requiring every effort to be made to avoid building over creeks. This policy has been effective in the past at protecting Seattle's creeks and is supported by best available science. For example, this policy was used by Thornton Creek Legal Defense Fund in its successful efforts to prevent Simon Property Group from expanding its mall over the pipe containing Thornton Creek. Ultimately, Mayor Nickels and the City Council recognized that the creek corridor on this property should be used for a natural drainage system / daylighting project. Without the existing protection for underground creeks -- which you slate for repeal -- the Mayor and Council would never have had this opportunity.

Under the existing CAO, daylighting incentives may be granted anytime a developer daylights a creek. Under the proposed updates, these incentives would only be available if the daylighting project satisfies rigorous criteria. This makes no sense. Daylighting will always restore important ecological functions and the Department should always have the discretion to provide incentives. While not all incentives should be granted to every daylighting project, the proposed update would effectively prohibit daylighting projects on Seattle's minor creek systems.

Given the strong public support for I-80 and the City's recent advancements on creek restoration, we were shocked to learn that DPD proposed to weaken creek restoration provisions. We know that such backsliding is not supported by best available science.

At a recent workshop, a DPD staff member admitted that protection for creeks in pipes were removed upon the advice of the Law Department. Apparently, the Law Department advised DPD that CAO protections could not legally extend to creeks in pipes. This opinion is not only incorrect, it is directly contrary to the Law Department's arguments to the courts during the recent I-80 lawsuit. There, the Law Department on behalf of the City took the position that the only way to adopt protection of creeks in pipes was through the CAO update.

Having successfully defeated Citizens' efforts to adopt creek restoration regulations, the City may not reverse its position and remove existing protections for underground creeks. On behalf of the 25,000 citizens who signed I-80, Yes for Seattle will use every legal tool necessary to prevent this illegal backsliding. However, we truly hope that DPD will respect the strong public support for creek daylighting and will strengthen -- not weaken -- the CAO provisions protecting underground creeks and supporting their restoration.

In addition, DPD should adopt the provisions of I-80 that restrict pesticide

use within 200 feet of city creeks. The current draft of the CAO prohibits the use of pesticides in buffers surrounding wetlands, but then allows the use of pesticides in shoreline districts. This is not only inconsistent, but also does not protect fish and wildlife living in those riparian areas.

Yes for Seattle has reviewed comments submitted by People for Puget Sound, Futurewise, Livable Communities Coalition, Washington Toxics Coalition, and Thornton Creek Alliance. We share the concerns expressed by these organizations, including the following:

... The proposed code does not include buffers for the Duwamish river, Lake Washington and saltwater shorelines (Type 1 waters) in Seattle.

... Isolated and smaller wetlands need protection.

... Stream buffers need to extend further to protect the ecological functions of the stream.

Please inform Yes for Seattle of future decisions made in this process.
Thank you for your consideration of these comments.

Very truly yours,

Yes for Seattle
Knoll Lowney, co-chair
Pam Johnson, co-chair

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